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trustee or receiver of the Surety. SBA will not be liable to the trustee or receiver of the insolvent Surety except for the guaranteed portion of any Loss incurred and actually paid by such Surety or its trustee or receiver under the guaranteed bonds.

(b) *Filing requirement.* The trustee or receiver must submit to SBA quarterly status reports accounting for all funds received and all settlements being considered.

§ 115.21 Audits and investigations.

(a) *Audits*—(1) *Scope of audit.* SBA may audit in the office of a Prior Approval or PSB Surety, the Surety's attorneys or consultants, or the Principal or its subcontractors, all documents, files, books, records, tapes, disks and other material relevant to SBA's guarantee, commitments to guarantee a surety bond, or agreements to indemnify the Prior Approval or PSB Surety. See § 115.18(a)(3) for consequences of failure to comply with this section.

(2) *Frequency of PSB audits.* Each PSB Surety is subject to an audit at least once every 3 years by examiners selected and approved by SBA.

(b) *Records.* The Surety must maintain the records listed in this paragraph (b) for the term of each bond, plus any additional time required to settle any claims of the Surety for reimbursement from SBA and to attempt salvage or other recovery, plus an additional 3 years. If there are any unresolved audit findings in relation to a particular bond, the Surety must maintain the related records until the findings are resolved. The records to be maintained include the following:

- (1) A copy of the bond;
- (2) A copy of the bonded Contract;
- (3) All documentation submitted by the Principal in applying for the bond;
- (4) All information gathered by the Surety in reviewing the Principal's application;
- (5) All documentation of any of the events set forth in § 115.35(a) or § 115.65(c)(2);
- (6) All records of any transaction for which the Surety makes payment under or in connection with the bond, including but not limited to claims, bills (including lawyers' and consult-

ants' bills), judgments, settlement agreements and court or arbitration decisions, consultants' reports, Contracts and receipts;

(7) All documentation relating to efforts to mitigate Losses, including documentation required by § 115.34(a) or § 115.69 concerning Imminent Breach;

(8) All records of any accounts into which fees and funds obtained in mitigation of Losses were paid and from which payments were made under the bond, and any other trust accounts, and any reconciliations of such accounts;

(9) Job status reports received from Obligees and documentation of each unanswered request for a job status report; and

(10) All documentation relating to any collateral held by or available to the Surety.

(c) *Purpose of audit.* SBA's audit will determine, but not be limited to:

(1) The adequacy and sufficiency of the Surety's underwriting and credit analysis, its documentation of claims and claims settlement procedures and activities, and its recovery procedures and practices;

(2) The Surety's minimization of Loss, including the exercise of bond options upon Contract default; and

(3) The Surety's loss ratio in comparison with other Sureties participating in the same SBA Surety Bond Guarantee Program to a comparable degree.

(d) *Investigations.* SBA may conduct investigations to inquire into the possible violation by any Person of the Small Business Act or the Investment Act, or of any rule or regulation under those Acts, or of any order issued under those Acts, or of any Federal law relating to programs and operations of SBA.

[61 FR 3271, Jan. 31, 1996, as amended at 72 FR 34599, June 25, 2007]

Subpart B—Guarantees Subject to Prior Approval

§ 115.30 Submission of Surety's guarantee application.

(a) *Legal effect of application.* By submitting an application to SBA for a bond guarantee, the Prior Approval Surety certifies that the Principal meets the eligibility requirements set

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forth in §115.13 and that the underwriting standards set forth in §115.15 have been met.

(b) *SBA's determination.* SBA's approval or decline of a guarantee application is made in writing by an authorized SBA officer. The officer may provide telephone notice before the Prior Approval Surety receives SBA's guarantee approval form if the officer has already signed the form. In the event of a conflict between the telephone notice and the written form, the written form controls.

(c) *Reconsideration-appeal of SBA determination.* A Prior Approval Surety may request reconsideration of a decline from the SBA officer who made the decision. If the decision on reconsideration is negative, the Surety may appeal to an individual designated by the D/SG. If the decision is again adverse, the Surety may appeal to the D/SG, who will make the final decision.

(d) *Notice and payment to SBA.* When the Surety has Executed a Final Bond, including a Final Bond under a bonding line, the Surety must complete the Prior Approval Agreement, and submit the form, together with the Principal's payment for its guarantee fee (see §115.32(b)) to SBA within 45 days, or in the case of a bonding line, within 15 business days (see §115.33(d)(2)) after Execution of the bond.

§ 115.31 Guarantee percentage.

(a) *Ninety percent.* SBA reimburses a Prior Approval Surety for 90% of the Loss incurred and paid if:

(1) The total amount of the Contract at the time of Execution of the bond is \$100,000 or less; or

(2) The bond was issued on behalf of a small business owned and controlled by socially and economically disadvantaged individuals, on behalf of a qualified HUBZone small business concern, or on behalf of a small business owned and controlled by veterans or a small business owned and controlled by Service-disabled veterans.

(b) *Eighty percent.* SBA reimburses a Prior Approval Surety in an amount not to exceed 80% of the Loss incurred and paid on bonds for Contracts in excess of \$100,000 which are executed on behalf of non-disadvantaged concerns.

(c) *Contract increase to over \$100,000.* If the Contract amount increases to more than \$100,000 after Execution of the bond, the guarantee percentage decreases by one percentage point for each \$5,000 of increase or part thereof, but it does not decrease below 80%. This provision applies only to guarantees which qualify under paragraph (a)(1) of this section.

(d) *Contract increase to over \$2,000,000.* If the Contract amount increases above the statutory limit of \$2,000,000 after Execution of the bond, SBA's share of the Loss is limited to that percentage of the increased Contract amount which the statutory limit represents, multiplied by the guarantee percentage approved by SBA. For example if a Contract amount increases to \$2,100,000, SBA's share of the Loss under an 80% guarantee is limited to 76.1% [$2,000,000 / 2,100,000 = 95.2\% \times 80\% = 76.1\%$].

(e) *Contract decrease to \$100,000 or less.* If the Contract amount decreases to \$100,000 or less after Execution of the bond, SBA's guarantee percentage increases to 90% if the Surety provides SBA with evidence supporting the decrease and any other information or documents requested.

[61 FR 3271, Jan. 31, 1996, as amended at 64 FR 18324, Apr. 14, 1999; 66 FR 30804, June 8, 2001; 72 FR 34599, June 25, 2007]

§ 115.32 Fees and Premiums.

(a) *Surety's Premium.* A Prior Approval Surety must not charge a Principal an amount greater than that authorized by the appropriate insurance department. The Surety must not require the Principal to purchase casualty or other insurance or any other services from the Surety or any Affiliate or agent of the Surety. The Surety must not charge non-Premium fees to a Principal unless the Surety performs other services for the Principal, the additional fee is permitted by State law, and the Principal agrees to the fee.

(b) *SBA charge to Principal.* SBA does not charge Principals application or Bid Bond guarantee fees. If SBA guarantees a Final Bond, the Principal must pay a guarantee fee equal to a certain percentage of the Contract amount. The percentage is determined by SBA and is published in Notices in